



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 6022650

Date: JAN. 8, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an actor, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.¹

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with our discussion below.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

¹ Previously, the Director issued a notice acknowledging the withdrawal of the petition. The Petitioner filed a motion to reconsider, asserting that he had not withdrawn the petition. The record contains no evidence of such a withdrawal. The Director granted the motion and later issued a decision on the merits of the petition.

- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner has documented a career in television and film dating back to the 1980s. He intends to work for [REDACTED], [REDACTED] California, for \$4000 per month plus 20% of profits above that amount accruing from his work for the company.²

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met four of the criteria:

- Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)
- Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii)
- Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

² [REDACTED] describes itself as "providing entertainment performances for TV programs and TV broadcasting." The company's address provided in the record corresponds to a private residence, as does the different address shown in California state filings. We note that the contract between the Petitioner and [REDACTED] expired on January 1, 2019, and that the California Franchise Tax Board suspended the corporate status of [REDACTED] for failure to meet tax requirements. This information may be material because the Petitioner must establish how he intends to continue working in his field in the United States. *See* 8 C.F.R. § 204.5(h)(5).

- Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Director found that the Petitioner did not satisfy any of the above-claimed evidentiary criteria. However, upon review we note that the Director did not consider much of the evidence in the record, and did not explain, in writing, the specific reasons for denial as required at 8 C.F.R. § 103.3(a)(1)(i). In this instance, the Director discounted many of the Petitioner's submissions because "[s]ome of the material did not contain attribution in accordance with 8 C.F.R. § 204.5(g) and some were not accompanied by a certified English translation in accordance with 8 C.F.R. § 103.2(b)(3)."

The Director correctly indicates that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). The translated documents in the record did, however, include certifications attesting to the accuracy of the translations and to the competence of the translator. The certifications deviated from the above requirement because the translator did not certify that the translations were *complete*, but the denial notice, as worded, implies that the certifications were entirely absent. Had the Petitioner been advised of a specific deficiency in the translations, that information would likely have shaped his appeal. (If the Director has reason to believe the translations are incomplete, and that they omit material information, then any new decision should specify these concerns.)

With regard to the Director's citation to 8 C.F.R. § 204.5(g), the word "attribution" does not appear in that section, or anywhere in the regulations at 8 C.F.R. § 204.5. 8 C.F.R. § 204.5(g)(1) relates to the submission of legible documents and lists the information required when providing "[e]vidence relating to qualifying experience or training." 8 C.F.R. § 204.5(g)(2) pertains to a U.S. employer's ability to pay a beneficiary's proffered wage. The latter regulation does not apply in this proceeding, because it applies only to petitions that require a job offer.

A petitioner's evidence should include information such as the dates and locations of significant events, and printouts from websites should identify those sites in order to allow routine verification. But the repeated references in the Director's decision to a vague and nonexistent regulatory requirement for "attribution" appear to have compromised the Petitioner's opportunity to mount a meaningful appeal. Furthermore, while some translations of Internet printouts in the record do not identify the source websites, many of the Chinese-language printouts do contain that information.

Further, the denial decision does not appear to reflect full consideration of the submitted evidence. For instance, that decision correctly indicated that user-edited websites such as Wikipedia and Baidu are not reliable primary sources of information; but the Petitioner did not rely *entirely* on user-edited websites to support his claims.

Also, with respect to membership in associations that require outstanding achievements, the Director notes the requirement that members pay dues, and appears to hold that membership in any association requiring the payment of dues cannot satisfy the criterion. Certainly, any organization that *only* requires payment of dues cannot be said to require outstanding achievements of its members; but

requiring the payment of dues does not immediately discredit a given membership, to the point of preventing consideration of other documented membership requirements.

As a final example, with respect to the Petitioner's claimed participation as a judge, the decision indicated that the Petitioner "was invited to judge," but that "the evidence does not show the beneficiary actually participated in the judging of the work of others for which he was invited." The Petitioner submitted a letter from the President of the [] Performing Art Institute, indicating that the Petitioner "actually participated in the . . . Judging Committee work." The official provided some details about the nature of the committee's judging work. The decision mentions this letter but does not acknowledge its discussion of the Petitioner's judging work. Instead, the decision indicates that the letter shows "that the beneficiary was a recipient of awards and served as vice president," followed by assertions (previously discussed) concerning translation and attribution.

The record includes evidence relating to some of the Petitioner's key claims, such as receipt of the 2004 [] Award, coverage in the *People's Daily*, and participating as a judge while serving as a vice president of a national organization, , and the decision, as worded, does not sufficiently explain why that evidence is deficient. In this way, the decision limited the Petitioner's ability to mount a meaningful appeal.

At this time, we take no position as to the Petitioner's eligibility for the requested classification. Rather, we remand the matter for the Director to review the record in light of the decision's deficiencies as outlined above, and enter a new decision. We note that in the event that a new decision proceeds to a final merits determination, the issue of *sustained* acclaim would warrant scrutiny.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.